

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6241**

**APPEAL OF WASHINGTON DC SMSA LP  
D/B/A VERIZON WIRELESS BY JAMES GOLDEN**

**OPINION OF THE BOARD**

(Hearings held April 30, 2008, May 28, 2008, July 2, 2008, and October 22, 2008)  
(Effective Date of Opinion: January 9, 2009)

Case No. A-6241 is an administrative appeal filed by James Golden on behalf of Washington DC SMSA LP d/b/a Verizon Wireless (the "Appellant") from the November 29, 2007 decision of the Montgomery County Historic Preservation Commission (the "HPC") to deny Historic Area Work Permit No. 469193 for installation of a telecommunications facility on the property of the Wesley Grove United Methodist Church, located at 23630 Woodfield Road, Gaithersburg, Maryland 20882 (the "Property"), in the RE-2 zone.

Pursuant to Sections 24A-7(h), 2-112, and 2A-1 et seq. of the Montgomery County Code, the Board held a public hearing on the appeal on April 30, 2008, May 28, 2008, July 2, 2008, and October 22, 2008. The Appellant was represented by M. Gregg Diamond, Esquire, and Cathy Borten, Esquire. Associate County Attorney Nowelle Ghahhari represented Montgomery County.

**Decision of the Board:** Administrative appeal **GRANTED**.

**FINDINGS OF FACT**

**The Board finds by a preponderance of the evidence that:**

1. The Property, known as 23630 Woodfield Road, Gaithersburg, Maryland, contains a resource recommended by the Planning Board's final draft amendment for Damascus-Goshen Historic Resources to the Master Plan for Historic Preservation in Montgomery County, Maryland, for designation as a First Period resource in the proposed Woodfield Historic District on the Master Plan. See Exhibit 11 at page 43.
2. On October 24, 2007, Counsel for the Appellants filed an application for a Historic Area Work Permit to construct a telecommunications facility (tree

monopole) on the subject Property. The Montgomery County Historic Preservation Committee (“HPC”) denied the application at its November 14, 2007, meeting, and issued a written decision to that effect on November 29, 2007. In that decision, the HPC found that the Property is an Outstanding Resource in the Woodfield Historic District; that the telecommunications facility would not be compatible in character and with the nature of the features of the historic site; and that the facility would not be in keeping with the *Secretary of Interior’s Standards for Rehabilitation*<sup>1</sup> and constitutes change to the environmental setting of an Outstanding Resource that would adversely affect the historic resource and the historic district. See Exhibits 3(a) and (b).

3. Mr. Robert Posilkin testified for the Appellant. Mr. Posilkin is currently the Manager for Real Estate and Zoning with Verizon. He testified that in July, 2005, Verizon identified a search area where they needed to construct a new facility, and that it was his job to find an appropriate site. He testified that he found one site within the search area—the Sprint flagpole monopole in the rear of the new parsonage for the Wesley Grove United Methodist Church. He testified that the Sprint pole had only one bay available for co-location, and that that bay was at 50 feet, which was insufficient for good coverage because the antennae have to be able to “see” each other in order to communicate. In addition, he testified that Verizon needs two frequencies for its service, which entails the use of two antennae, and that they could not place the two antennae in the single bay available in the Sprint flagpole.

Mr. Posilkin testified that he had identified another site, located outside (north and west) of the search area, that contained a telecom structure on a Washington Suburban Sanitary Commission (“WSSC”) facility. He testified that he conducted transmission tests from that site to see if it would work for Verizon, and that it would not.

Mr. Posilkin then testified that he met with the Tower Committee to discuss a possible stealth transmission facility at the Wesley Grove site, in the area of the Sprint flagpole monopole.<sup>2</sup> He stated that Sprint used a flagpole design in this location to disguise their antennae.<sup>3</sup> He explained that both Verizon and Sprint use stacked antennae to transmit and receive. He stated that the standard array of antennae is spread out, and that on a “tree” monopole, the foliage hides the

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<sup>1</sup> The Opinion notes at page 6 that the *Secretary of Interior’s Standards* 1, 2 and 9 are particularly applicable to this case. Those Standards read as follows:

Standard 1: A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials features, spaces, and spatial relationships.

Standard 2: The historic character of a property will be retained and preserved. The removal of distinctive materials or alternation of features, spaces, and spatial relationships that characterize a property will be avoided.

Standard 9: New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

<sup>2</sup> On cross-examination, Mr. Posilkin testified that if this HAWP were not granted, Verizon would go back to the location of the Sprint flagpole and try to get a second flagpole.

<sup>3</sup> Mr. Posilkin explained that a stealth structure (such as a flagpole or a tree monopole) is intended to mitigate the view of a standard monopole.

antennae. Mr. Posilkin testified that the Tower Committee strongly opposed Verizon's initial proposal, citing the height and location of the proposed structure, and its effect on views. He testified that the Tower Committee requested that the proposed monopole be moved to another location on the interior of the property,<sup>4</sup> required that it meet the 300 foot setback [from off-site, residential structures], and required that Verizon mitigate the appearance of the monopole with a tree design.<sup>5</sup> Mr. Posilkin testified that by using the tree design, the antennae could be spread out at 80 feet, instead of using the stacking arrangement which would be otherwise be needed and which would have resulted in the need for a 100 foot structure. Mr. Posilkin then testified that the Tower Committee recommended in favor of the tree monopole design on the interior of the Property. See Exhibit 8(c)(18) (April 26, 2007 letter from Jane Lawton of the Tower Committee to Chair Fultz regarding this monopole). Verizon agreed to all of the Tower Committee recommendations.

Mr. Posilkin testified that Verizon is proposing to locate their tree monopole in a treed area in the mid-center of the Property. He testified that the pole would be accessed from Route 124, and that it would be an 80 foot structure (87 feet total with branches). He testified that the antennae would be located at 80 feet, would be hidden behind tree material, and would be painted if necessary. He testified that it would blend in with the surrounding treed area. He noted two other tree monopoles located in Montgomery County, to which he stated this pole would be similar, but smaller.<sup>6</sup> He testified that the tree monopole would meet all building code requirements, and that if the Board approved the HAWP, Verizon would proceed with the necessary special exception.

On cross-examination, Mr. Posilkin testified that the proposed tree monopole would be located directly behind the educational building, which is in the historic district. See Exhibit 8(c)(7), showing the outline of the historic district. When asked if you could see the monopole if you were standing in front of the church, Mr. Posilkin testified that that would depend on where you stood, indicating that from certain locations, you would see nothing, and that from others, you might be able to see the top one-fourth of the pole. In response to a question from the Board, Mr. Posilkin testified that the proposed location is approximately 220 feet behind the educational building, clarifying that the 300 foot setback applies to off-site residential properties. When asked if the educational building was the nearest building, Mr. Posilkin testified that there was a shed located approximately 120 feet from the proposed monopole location.

Mr. Posilkin described the area proposed for the monopole as an undeveloped area in the center of the Property. He testified that the area has scrub and tall

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<sup>4</sup> Mr. Posilkin clarified on cross-examination that the proposed tree monopole and the existing Sprint flagpole would be located on different parcels of property.

<sup>5</sup> On cross-examination, Mr. Posilkin testified that he did not know if the members of the Tower Committee had historic preservation backgrounds or knowledge, and that he did not recall if they knew that this was an historic district, although he stated that Ms. Mahood knew this was an historic district, and that he assumed she made reference to that fact in her report.

<sup>6</sup> Specifically, he testified that the proposed tree monopole would be similar to the Verizon pole at the VFW in Great Falls Park (see S-2279), and to the tree monopole at Avenel (see S-2347), but that this pole would be smaller. Neither of those poles are located in Historic Preservation areas.

deciduous trees, and that the proposed location is in the “treed” portion of the Property. He estimated the height of the trees at 40-45 feet, and stated that the proposed tree monopole would be 80 feet with pine needles. He testified that in the winter, the view of the tree monopole would continue to be mitigated by the surrounding tree branches, because of their density, and that it would look like an evergreen. He testified that it was not unusual to have trees of different heights, and that passers-by would not give the tree monopole a second thought. He testified that the tree monopole would be amongst the tallest trees, and that he believed it would blend in.

4. Mr. Kurt Westergard testified for the Appellant as an expert in assessing visual impact and line of sight issues with respect to architectural simulations. Mr. Westergard testified that his company, “Digital Design and Imaging Services, Inc.,” provides unbiased and factual studies, and that they have provided visual impact assessments for Verizon and six or seven other carriers, and on behalf of governmental agencies.

Mr. Westergard testified that Verizon had contacted him about this Wesley Grove site. He testified that he took photographs of the site in the winter and spring. He presented a slide show which included photosimulations showing how the tree monopole would appear in winter from various depicted and described vantage points in and around the Woodfield Historic District. See Exhibit 8(c)(8) at pages 123-133. He explained that the photosimulations were prepared by lofting an aerostat balloon at the location proposed for the monopole to an elevation of 87 feet, as measured with a laser rangefinder. Photographs showing the view of the balloon were taken from the various vantage points. He stated that his company then built a computer model of the tree monopole, which they superimposed onto the photographs they took at the height and in the location shown by the balloon. He provided a map showing the places from which each picture was taken.<sup>7</sup> See Exhibit 8(c)(8) at page 123. Most of the photographs were in sets of two—one showing the current view (without the monopole), one showing the view as it would be if the tree monopole were constructed. Mr. Westergard also presented a slide show depicting the views from various depicted and described vantage points during the summer season. Again, the photographs were generally presented in sets of two, with and without the tree monopole. See Exhibit 8(c)(8) at pages 135-151. Mr. Westergard testified that the photographs presented in the slide shows, including the photosimulations, were fair and accurate, and that they speak for themselves.

Mr. Westergard testified that he prepared another set of photographs that was more focused on the Historic District. He stated that the methodology used was the same as with the previous simulations. See Exhibit 8(c)(9) at pages 152-199. Mr. Westergard narrated a slide show of these photographs, which were taken from various and depicted locations (all of which were within the historic district or just outside), and testified as to the visibility or lack of visibility of the proposed tree monopole from each location. He testified that his representations that the

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<sup>7</sup> Counsel for the Appellant noted that the pictures were prepared in connection with the special exception, and that the pictures were not all taken from within the Historic District, but rather were taken from places you could see the balloon.

tree monopole was not visible or was obscured from various locations were unquestionably fair and accurate.

On cross-examination, Counsel for the County went over several of the photos from Exhibit 8(c)(9),<sup>8</sup> asking where the pictures were taken, whether the photographer was standing inside the Historic District, what the designation of any structure shown in the picture was, and whether the tree monopole was visible.<sup>9</sup> In responding to these questions, Mr. Westergard testified when his company takes photos, they err on the side of more visibility, they take photos sequentially, and they try to be impartial. He testified that they try to pick “fair” pictures, taken from public gathering spots and at ground level.<sup>10</sup> He characterized the work his company does as “dumb visual,” and testified that they do not talk to neighboring residents about visual impact. He testified that he considers the tree monopole to be “clearly visible” if the top 80 percent is visible. In response to assertions from Counsel that the photos at page 158 of Exhibit 8(c)(9) and page 124 of Exhibit 8(c)(8) depict “antenna pole farms” because they show the Sprint flagpole and the proposed tree monopole, Mr. Westergard testified that he did not consider the 100 foot flagpole and proposed tree monopole an antenna farm. Finally, in response to a question from the Board, Mr. Westergard testified that the tree monopole is intended to resemble a white pine, and that the crown form is not unnatural for a tree in a stand of trees. He testified that the stand of trees in which the monopole would be located contained volunteer locust trees, but that the town itself was defined by oak trees.

On redirect, Mr. Westergard testified that none of the photographs were taken with a zoom lens, and that there was no perspective correction. He further testified that his photographic team, if anything, overemphasized the photographs in which you could see the tree.

5. Ms. Kate Mahood testified for the Appellant as an expert in historic preservation consulting. She testified that she had done a review pursuant to section 106 of the National Historic Preservation Act of the Verizon proposal for the Maryland Historic Trust.<sup>11</sup> Ms. Mahood testified that in 2005, an agreement between the States and the Federal Communication Commission called for a study of the effect of towers on historic resources, and that she investigated the subject Property as a result of a request from Geo-Technology Associates, Inc. See Exhibit 8(c)(19). She testified that Counsel for the Appellant contacted her after the HPC denied the HAWP at issue in this appeal, and asked her to see if there was a basis for issuance of the HAWP. In response to this request, she testified that she prepared the letter of April 17, 2008. See Exhibit 8(c)(20).

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<sup>8</sup> Counsel specifically asked about the photos on pages 154, 156, 158, 161, 163, 165 of Exhibit 8(c)(9).

<sup>9</sup> The locations from which the photos were taken, the designation of any structures shown, and the visibility of the monopole are all matters of record, and are not recounted here.

<sup>10</sup> Mr. Westergard explained “ground level” as the view of a person on the ground: 5.5 feet when standing, or 3.25 feet when riding in a car.

<sup>11</sup> The Section 106 review is not relevant to these proceedings. Counsel for the Appellant indicated that this information was introduced solely for the purpose of explaining how Ms. Mahood became involved with this case.

Ms. Mahood testified that she did a site inspection in 2007, walking the historic district and becoming familiar with it. She testified that she hired Gibb Archaeological Consulting to provide a professional evaluation as to the archaeological effect of the proposed monopole, if any, and that she prepared a report based on their combined resources. She testified that she visited the site again in 2008. She testified that she reviewed Chapter 24A of the County Code and the photo-simulations, and that as an expert, she began to form an opinion in this matter

She testified that Woodfield is a linear village, with structures from the 1800s and early 1900s lining the road. She testified that she noticed affiliated community structures, including a community store and church, and that she then noted the church hall. She testified that she noted later (non-historic) additions to the historic district.<sup>12</sup> Ms. Mahood testified to her opinion that this historic district is not layered with architectural significance, but that the general cohesiveness of the District was there. She testified that the streetscape is significant to this historic district, and defines its character.

Ms. Mahood testified that she reviewed the criteria in Section 24A-8(b) for the issuance of a HAWP,<sup>13</sup> and that in her opinion, a HAWP should have been granted for the tree monopole. She testified that the installation of the monopole would not be detrimental to the historic district, and that there is a need to strike a balance between preserving the past and providing modern conveniences. With respect to Section 24A-8(b)(1), Ms. Mahood testified that the proposed tree monopole would not substantially alter the exterior features of the historic site or resource. She testified that the monopole is set deep in the back yard of the subject Property, 350 feet from the road, is well-screened, and is not visible from most historic properties in the District. She testified that “substantially alter”

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<sup>12</sup> On cross-examination, Ms. Mahood testified that the residential development around this historic district had compromised the viewshed. She also indicated that changes within the district, such as the addition of a parking lot and the Sprint monopole, had detracted from the viewshed.

<sup>13</sup> Section 24A-8(b) of the County Code reads as follows:

(b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to insure conformity with the purposes and requirements of this chapter, if it finds that:

(1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or

(2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or

(3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or

(4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or

(5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or

(6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

Ms. Mahood testified on cross-examination that it was her understanding that if a HAWP application met one of these criteria, the HAWP should be granted, and that in this case, she believed the application met five of the six criteria, with one being inapplicable.

means to put on a major addition, or to tear something down, and that the proposed tree monopole did neither. She testified that “exterior features” should be viewed as the streetscape and the building facades, none of which would be altered by the installation of the monopole. She testified that of 32 properties in the Woodfield Historic District, only 5 would have any view of the tower once constructed, as follows: 23614 (social hall), 23640 (Wesley Grove Church), 23633 (Mary Ward House), 23630 (subject Property), and 23643 (Ignatius Alberto Ward House). She noted that 23614 Woodfield Road (social hall) would have a slight view, and that the original building on this property, which dates to the first period, already has non-historic additions. She testified that all five of these resources are first period resources. She testified that when you look from 350 feet back from the road (i.e. from the location of the proposed monopole), you are looking at a non-historic environment.

Ms. Mahood pursuant to Section 24A-8(b)(2), the proposed monopole is not incompatible in character and nature with the Historic District. She testified that while the tree monopole is obviously not a real tree,<sup>14</sup> it does not harm the character-defining aspects of the historic village. She testified that the monopole is not on a structure, is set way back from the road, and is reversible. She testified that compatibility is a reason to grant.

With respect to Section 24A-8(b)(3), that the proposal would aid in the protection and preservation of the historic resource, Ms. Mahood testified that she had worked with many rural churches, and that they struggle financially. She testified that the income received as a result of the construction of the monopole would help the church maintain its buildings. She testified that cell towers are modern-day infrastructure, and that they are necessary for safety and for the long-term viability of the neighborhood.

Ms. Mahood testified that Section 24A-8(b)(4) is not applicable. With respect to Section 24A-8(b)(5) (that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship), Ms. Mahood testified that allowing installation of the monopole would lower the Church’s expenses and allow the Church to remain a vital force in the neighborhood.

Finally, Ms. Mahood testified that Section 24A-8(b)(6) sets forth the strongest reason to grant this HAWP (i.e. that in balancing the interests of the public in preserving the historic site or resource with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit). She testified that the monopole is designed for public benefit, and that Verizon has worked hard in selecting the proposed site and stealth (tree) design so as to ensure that the monopole would be hidden from the historically significant streetscape. She testified that Verizon’s

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<sup>14</sup> On cross-examination, Ms. Mahood testified that she thought that the tree monopole design is an appropriate, sensitive solution, and helps the structure blend in better with the existing landscape than would alternative designs. She further testified that the structure was set back from the street, and did not jeopardize the streetscape. Ms. Mahood testified that in this case, the effect of the structure on the streetscape was more important than the effect it may have on any one resource.

alternative location, which would entail construction of the monopole near the Church parking lot, would be worse.

Ms. Mahood testified that pursuant to Section 24A-8(d), lenient scrutiny is in order when reviewing this HAWP application.<sup>15</sup> In support of this statement, she testified that the proposed monopole did not impact the historic value of surrounding historic resources and did not seriously impair the Historic District. She went on to classify the proposal as a plan for “new construction,” which would not seriously impair the historical or architectural value of the surrounding historic resources. She noted again that the monopole could be seen from five of the 32 properties in the historic district, but that the view was at quite a distance from the structures and from the streetscape. Ms. Mahood also testified that the monopole was not a permanent feature. In response to a Board question regarding the meaning of the term “reversible,” she testified that reversible means that something can be taken out and the site/structure restored to its original condition. When asked if she had ever seen a monopole taken down, Ms. Mahood testified that they all have clauses in their leases that say that when they are no longer used, they must be taken down.

In response to a Board question, Ms. Mahood testified that documentation she submitted addresses to *Secretary of Interior’s Standards* Nos. 1, 2, and 9. See October 22 Tr. at page 44, and Exhibit 8(c)(20). She testified that there is a lot of room for interpretation within the *Secretary’s Standards*, and that the *Guidelines* have been established as working tools to help people interpret *the Secretary’s Standards*.

6. Ms. Anne Fothergill testified for the County. Ms. Fothergill stated that she has been an Historic Preservation Planner with the HPC for five and one-half years. She testified that she reviewed this HAWP application and prepared the staff report. Ms. Fothergill clarified that this is a locational atlas historic district, and that if substantial alteration is proposed, an applicant can submit an application for a HAWP as if the district were already on the Master Plan for Historic Preservation. She went on to state that because this district has been evaluated, HPC staff has been directed to treat it as if it were already on the Master Plan.

Ms. Fothergill testified that she had been to the Property one time. She testified that the Commission is most likely not familiar with a locational atlas historic district, and that she attempted to provide them with a broad overview of the district, including the layout of the district, as well as information about the subject Property. She testified that she took photographs for this purpose, which she narrated for the Board.<sup>16</sup> See Exhibit 25(a)-(n).<sup>17</sup>

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<sup>15</sup> Section 24A-8(d) reads as follows:

“(d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district.”

<sup>16</sup> She clarified that she did not take the aerial photographs, but rather that they were taken from the County’s pictometry database.

<sup>17</sup> On cross-examination, Ms. Fothergill acknowledged that the photo at Exhibit 25(g) depicted a cinder block garage, between 16 and 20 feet tall. Further questioning made the point that this building, which is twice as tall as

Ms. Fothergill testified that the historic district is a late 19<sup>th</sup> century, early 20<sup>th</sup> century, linear district along Woodfield Road, with farms, stores and a hall. She testified that it was evaluated for its historic significance, importance and integrity. Ms. Fothergill stated that although this HAWP application is for 23630 Woodfield Road, because of the shape of that lot, the proposed tree monopole would be located behind the social hall (referred to by Mr. Posilkin as the educational building) located at 23614 Woodfield, which is an outstanding resource. See Exhibits 25(k) and (l). She testified that the Singleton and Mary King house (referred to by Mr. Posilkin as the old parsonage), located at 23630 Woodfield Road, would also be affected, and that it is also an Outstanding Resource.

Ms. Fothergill testified that, as shown in the photo simulations by the Appellant, the proposed monopole would be visible from a number of historic resources within the district, as well as on approach to the district, albeit at an angle. Ms. Fothergill testified that the photosimulations show that the proposed tree monopole is out of scale and character with the historic resource, testifying specifically that it was an incompatible, inappropriate installation for the historic social hall in its environmental setting. She testified that the tree is visible in a number of these photo simulations. See, e.g. Exhibit 8(c)(9) at pages 155, 157, 159, 161, 163, 165, 167 and 169. She testified that the photo simulation at page 163 of Exhibit 8(c)(8) (the Singleton and Mary King House) shows that the tree is green and visible within a setting of deciduous trees that are not green.<sup>18</sup> She testified that it was eye-catching,<sup>19</sup> and did not blend in as a natural tree despite its stealthing, and that along with the 45 foot by 45 foot [equipment] compound, the 8 foot fencing, and the tree removal, this 87 foot tall tower had a very large impact on the historic district. She testified that the HPC ultimately denied this HAWP application because of its visual impact, its physical impact, and its impact on the integrity of the historic district.<sup>20</sup> She characterized the proposal as an 87 foot installation within an historic district of low, one-story buildings. Ms. Fothergill testified that the installation was not in keeping with the layout of the historic district, and would affect the way the buildings read and the settings read. She testified that staff and the HPC had advised the applicant to consider alternative locations, including possible co-location with the Sprint flagpole.<sup>21</sup>

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the proposed 8 foot fence and 9 foot high equipment compound, was not visible in the other photographs (except those taken in the back yard of the church properties). Counsel for the Appellant argued that this should be taken to mean that the fence and equipment compound were not the reasons for the denial.

<sup>18</sup> On cross-examination, Ms. Fothergill acknowledged that this photo shows two existing pine or conifer trees above and behind the parsonage, and that both appear larger than the proposed monopole. She further acknowledged that the photograph shows 9 other specimen trees in the foreground which appear larger than the proposed tree monopole.

<sup>19</sup> Ms. Fothergill testified that the proposed tree monopole would stand out as an artificial tree because of its height and general design, but primarily because it is an evergreen in a stand of deciduous trees.

<sup>20</sup> On cross-examination, counsel for the Appellant went through several of the photographs with Ms. Fothergill, and questioned her characterization of “visual impact,” noting that regardless of their actual size, perspective made images in the foreground appear larger than images that are farther away, and thus noting that even if the proposed tree monopole were taller than other trees (or buildings) in the area, perspective made it appear smaller.

<sup>21</sup> On cross-examination, Ms. Fothergill acknowledged that Verizon had offered to move their equipment compound out of the wooded area, to avoid the need to remove any trees, and to put up a different type of fence if the HPC so desired.

Ms. Fothergill described the resources in the Woodfield Historic District as follows:

1880-1910: First period; Outstanding Resource  
1910-1935: Second period; Outstanding Resource  
1935-1955: Third period, Contributing Resources (pre-war and post-war)  
Post-1955: Non-contributing Resources

Ms Fothergill testified that the Church, located at 23640 Woodfield Road, was built in 1910, and is an Outstanding Resource. She testified that a second structure on that lot is also Outstanding. In addition, Ms. Fothergill testified that the structures at 23633 Woodfield Road (Mary Ward House) and 23643 Woodfield Road (Ignatius Ward House) are Outstanding Resources. She testified that the Sprint flagpole is located at 23612 Woodfield Road. Finally, she testified that buildings that were not shown as colored on page 40 of the final draft of the Damascus-Goshen Historic Resources amendment to the Master Plan for Historic Preservation had not yet been evaluated. See Exhibit 11 at original page 40.

On cross-examination, Ms. Fothergill testified that the resources in the Woodfield Historic District were grouped by period, and that staff reviews an inventory form which talks about the architectural features of each resource. She agreed with counsel that only a portion of the Church hall dated to the First period, and that the rest was new, but testified that staff had identified this as a building that played a role in the history of this farm community.

When asked by Counsel for the Appellant if “Outstanding Resource” was defined, Ms. Fothergill testified that paragraph 1.5(a)(3) of section 24A.04.01.01 of the Code of Montgomery County Regulations, entitled “Historic Area Work Permits” and implementing Chapter 24A of the County Code, makes clear that the applicable master plan, sector plan, or functional master plan would include categorization of properties in historic districts by level of significance, and would define and clearly explain the categories used. See Exhibit 6(j). She then testified that for the Woodfield district, Outstanding Resources were First and Second period resources. See Exhibit 11, at original page 44. Counsel for the Appellant then introduced a portion of the April, 2007, amendment to the Master Plan, and asserted that “Outstanding Resource” did not appear in the November, 2007 draft, which Ms. Fothergill testified she used in her report. See Exhibit 12. On redirect, Ms. Gharrari made clear that the resources as classified in the same manner in Exhibits 11 and 12. Ms. Fothergill then testified that First and Second period resources are to receive the highest level of scrutiny, and that in the Woodfield Historic District, “Outstanding Resource” means a First or Second period resource.

Ms. Fothergill testified that the *Secretary of Interior’s Standard #10* is of particular importance to this case. She highlighted guidance from page 68 of the *Secretary of Interior’s Illustrated Standards and Guidelines*, which she testified states the need to consider the relationship between landscape features and historic buildings, and guidance from paragraphs 2 and 3 on page 74, which she testified

recommend against introducing a new site feature that it out of scale or otherwise inappropriate in design, and introducing a new landscape feature that is visually incompatible with the site or that alters or destroys the historic site patterns or vistas. She testified that these two guidance points were cited in the staff report.

On cross-examination, Ms. Fothergill testified that pages 44 and 45 of the April 2007 draft of the Damascus-Goshen amendment to the Master Plan were inadvertently left out of the staff report, including the Woodfield Historic District Design Review Guidelines, and thus were not before the HPC when it reviewed this HAWP application.<sup>22</sup> Counsel for Appellant then stated that those pages say that “a significant feature of the Woodfield Historic District is the rural streetscape which is characterized by mature trees, the orientation of the houses to the road, and the modest scale of architectural elements fronting the road. Review of proposed changes should ensure that these features are respected. See Exhibit 12 at page 45. In response to questioning, Ms. Fothergill testified that the proposed installation would not cause the removal of any of the large, mature specimen trees at the front of the church properties, would not alter the orientation of any house in the Woodfield Historic District, and would not change the modest scale of the low, one-story buildings that front the road and are part of the linear district

On cross-examination, Ms. Fothergill acknowledged that the staff report only included two of the six possible reasons to grant a HAWP under Section 24A-8(b), stating that the two included (numbers one and two) were determined by staff to be the most relevant to this case. She testified that staff took the position that factor 6 (set forth in Section 24A-8(b)(6), which is a test balancing the interests of the public against the preservation of the historic site or resource, was not relevant. On redirect, Ms. Fothergill made clear that she does not provide legal advice to the Commission, and that she believes that the members of the Commission are familiar with all of the factors set forth in Section 24A-8(b).

7. Mr. Scott Whipple, the Historic Preservation Supervisor in the Historic Preservation Section of the Montgomery County Planning Department, testified for the County.<sup>23</sup> He testified that this HAWP application was for the installation of an 87 foot tall stealth monopole tree tower, a 45' x 45' (equipment) compound, an eight foot tall fence, and a 20' wide, 50' long driveway, and for the removal of eight trees. He testified that all of this work, taken in combination, amounted to a substantial alteration, which he defined as a change that would have a significant impact on an historic resource or on the way such a resource is perceived, such that a HAWP was needed for this work under the historic preservation ordinance. He testified that the attempts to disguise this monopole as a tree made it so

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<sup>22</sup> Ms. Fothergill testified that she had gone to designation staff to get the materials pertaining to this district, and that they did not give her these two pages. She made very clear that any omission was not intentional.

<sup>23</sup> As a preliminary matter, he stated that (as of the October 22, 2008 hearing) the Woodfield Historic District remained on the locational atlas, and was part of the Damascus-Goshen amendment to the Approved and Adopted Master Plan for Historic Preservation in Montgomery County, Maryland, which is currently before the County's PHED Committee. He later testified that with a locational atlas district, substantial alterations of a property within the district, the exterior of a resource within a district, or the environmental setting of a resource are subject to HPC review. Alterations determined not to be substantial are not.

visually arresting that the HPC believed the proposal was inappropriate, later indicating that the stealthing drew more attention to this tower than would otherwise be drawn and created a false sense of the environmental setting. He testified that the incompatibility of the stealth components of this tower, coupled with its 87 foot height, seven feet of which was needed solely for the purpose of the stealthing, led to the HPC's determination that the proposed work was incompatible with the historic district. He testified that there were discussions at the HPC hearing that an alternative design may have been less visually arresting and would have less of an impact on the historic resource where the tower was located, on adjacent resources, and on the historic district itself.<sup>24</sup> He testified that if the tower had an adverse impact on the individual resource, on many resources, or on the entire district, that would be a sufficient reason to deny the HAWP.

Mr. Whipple testified that in prepared the HPC staff report, staff considers the same criteria considered by the HPC: Section 1.5 of the Executive Regulations to the Historic Preservation Ordinance (Chapter 24A of the County Code), Section 24A-8 of the County Code, the *Secretary of Interior's Standards and Guidelines for Rehabilitation*,<sup>25</sup> and any guidance provided for in a master plan or in a district-related study. In response to a Board question, Mr. Whipple stated that in this case, because the Master Plan has not yet been adopted and thus doesn't have the force of law,<sup>26</sup> the HPC (and staff) would look first to Section 24A-8 and the *Secretary of Interior's Standards and Guidelines for Rehabilitation*. He clarified that the *Secretary of Interior's Standards and Guidelines* are invoked by the Executive Regulations implementing Chapter 24A. In response to another Board question, Mr. Whipple testified that it is staff view that if a HAWP is found to be inappropriate, inconsistent, or detrimental under Section 24A-8(a) of the County Code, it should be denied, and there is no need to address the factors for granting the HAWP under Section 24A-8(b).<sup>27</sup> Mr. Whipple went on to state that staff had addressed the factors under 24A-8(b) in this case, in an effort to be thorough and out of an abundance of caution. He later testified that staff's goal is not to deny applications, but rather to try to get to approval. He testified that Chapter 24A and the Executive Regulations encourage consultation and

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<sup>24</sup> He later testified that one alternative suggested by the HPC was a narrow monopole, painted brown. He suggested other alternatives proposed were location on the existing Sprint monopole, and location outside of the historic district in general. Mr. Whipple testified that after the HPC hearing, he indicated to the Appellant that HPC seemed willing to approve an alternative designed installation.

<sup>25</sup> On cross-examination, Mr. Whipple was asked if he was aware of a December 22, 1998 legal opinion from the Office of the County Attorney which states that the *Secretary's Guidelines* are only guidance, and do not have to be followed. He indicated that he was not. Counsel for the County argued that the OCA opinion is not controlling law. See Exhibit 26. In response to further questioning, Mr. Whipple clarified that the HPC is guided by the *Secretary's Guidelines* in making their decisions, indicating that if the HPC strays from a strict reading, they attempt to explain their position using the particulars of the case.

<sup>26</sup> Mr. Whipple clarified that although the Master Plan has not been adopted yet, and thus does not have the force of law, it does include guidance. He testified that the HPC's decision to deny this HAWP, however, was not based on anything in the Master Plan, but rather was based on Chapter 24A and the *Secretary of Interior's Standards and Guidelines*.

<sup>27</sup> Counsel for the Appellant disagreed with this, arguing that there is nothing in Section 24A-8(b) which references a finding under Section 24A-8(a), or vice versa. He argued that if you had to stop at subsection (a), you would never reach the leniency standard in subsection (d). Counsel for the County ultimately agreed that one could not give prominence to the order of the subsections in Section 24A-8.

back and forth between staff and the applicant prior to formal consideration by the HPC, and that staff always try to work with applicants to generate an approvable application.

Mr. Whipple testified that in the proposed Damascus-Goshen amendment to the Master Plan, there are four levels of designation for historic resources. He testified that the first two levels correspond with the first two periods of development within the historic district, and those resources are considered outstanding. He testified that the third level of designation is for more recent resources, and that those resources are considered contributing, and that the most recent development is considered non-contributing. He testified that the Property where this structure was to be constructed, and the property behind which this structure was to be constructed, are both outstanding resources, meaning that changes to them receive the highest level of review. Mr. Whipple clarified that regulatory staff did not rely on the yet-to-be-adopted Master Plan, but rather made their own assessment about the historical significance of the properties in question in evaluating this HAWP. He testified that regulatory staff had the benefit of seeking the advice of the architectural historian staff, who had already evaluated this district in connection with preparation of the Master Plan amendment, and so they were able to gauge the level of significance of this resource based on the evaluation that led to the master plan amendment. In response to a Board question, Mr. Whipple testified that the presumption is that everything in the locational atlas should get the highest level of scrutiny unless it is not historic or unless, for whatever reasons, it meets the leniency provisions established in the historic preservation ordinance.

In response to Ms. Mahood's testimony that leniency was appropriate in this case under section 24A-8(d) of the County Code,<sup>28</sup> Mr. Whipple explained that that section says that plans for new construction should have a more lenient review unless those plans would seriously impair the historic or architectural value of the surrounding historic resources, or would impair the character of the historic district. He then testified that in the HPC's opinion, the proposed work would seriously impair the historic or architectural value of the surrounding historic resources or impair the character of the historic district. In response to a Board question asking why, Mr. Whipple testified that, unlike Ms. Mahood, he did not believe that the viewshed for this historic district had been compromised by development. He testified that there were only one or two non-contributing resources within the historic district. He testified that he did not believe that the development beyond the historic district was visible from within the historic district. Mr. Whipple later testified that the HPC takes a district as it exists at the time of its designation, which may include changes that were not original to the district, such as parking lots, telephone poles, driveways, and vinyl siding. He testified that the HPC does not take these existing changes into consideration when deciding whether or not a proposed alteration is historically appropriate.

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<sup>28</sup> Section 24A-8(d) reads as follows: "In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district."

Mr. Whipple testified that both Chapter 24A and the *Secretary of Interior's Standards* talk about the environmental setting of an historic structure, in addition to the structure itself, adding that a proposal that has an adverse effect on the environmental setting of a property is as inconsistent with the historic preservation ordinance as a proposal that would have an adverse effect on the building. He testified that an historic district includes the properties and the improvements on the properties, and that the environmental setting is integral to the historic district. Finally, Mr. Whipple testified that he believed the woods in which the tower would be located are part of the environmental setting, and contribute to the streetscape because they contribute to the way in which we see the street.

On cross-examination, Mr. Whipple testified that he reviewed the staff report at Exhibit 6(c) that he believes it was fair and accurate when it was issued, and that he believes it is still a fair and accurate summary of the law and recommendation to the HPC. When asked if there was any new evidence he had seen in this de novo hearing which would change his recommendation to the HPC, Mr. Whipple said no.

In response to questioning on cross-examination about the map of the historic district included in the pending master plan amendment, Mr. Whipple acknowledged that the proposed monopole would be set back 350 feet from the road, and that at that distance behind historic district properties on the west side of Woodfield Road other than the church properties, there was a new subdivision and other newer items, outside of the historic district. Mr. Whipple acknowledged that there were also new, modern subdivisions 350 feet behind the historic properties located at 23717 to 23825, along on the east side of Woodfield Road. See Exhibit 6(c) at page 96.

8. Dr. David Rotenstein testified for the County. He was accepted as an expert in historic preservation. He testified that he was familiar with Appellant's HAWP. He testified that in his capacity as an historic preservationist, he had reviewed the placement of other telecommunication facilities within historic districts and on historic resources. He testified that he had dealt with concealed telecommunications facilities on several occasions, including facilities located within church steeples, monopines, monopalms, facilities located in building bulkheads, and facilities co-located flush on historic buildings, painted to match. Dr. Rotenstein testified that he was familiar with the Woodfield Historic District from the materials presented in support of the HAWP application. He also testified that he is familiar with Section 24A of the Montgomery County Code, which he described as being more stringent than the standards for Section 106 [of the National Historic Preservation Act], as applied to Federal Communications Commission licensees. He stated that he is familiar with the guidelines that the HPC uses in determining whether or not to approve a HAWP, stating that they are guided first and foremost by Chapter 24A of the Montgomery County Code; secondly, by the *Secretary of the Interior's Standards and Guidelines for Rehabilitation*; and finally, by individual changes to the Master Plan for Historic Preservation that specify treatment for specific historic districts that have gone through the historic review process.

Dr. Rotenstein testified that as a professional, he defines “visual impact” as any change in the visual environment, positive or negative, that influences a viewer’s ability to interpret the surrounding cultural landscape, whether it’s a building, a farm field, a battlefield, or something else. He testified that there is no threshold number of properties within an historic district that must be affected by a proposed installation before the district is considered impacted, testifying that the district either is or is not affected, and that if it is affected, the effect is either adverse or not adverse. He further testified that simply creating a negative visual impact or a significant visual impact to one property crosses the line into what he would call adverse or significant impact. He testified that the introduction of an element that is out of scale or out of character with the historic district, such as an 87 foot telecommunications facility constructed of synthetic materials which does not resemble a natural tree, draws the attention of the viewer towards the out of scale element. He testified that this has been demonstrated in engineering and psychological studies. He went on to state that stealth trees such as monopines and monopalms have achieved a status in our society where they’re lampooned and caricatured in all aspects of popular culture.<sup>29</sup>

Dr. Rotenstein testified that the photographic simulations provided by the Appellant lack the full range of the color spectrum that the human eye can see, and that they do not convey the interaction between the artificial installation and the natural environment. By way of example, he noted that a tree in full leaf and the artificial tree would react differently to wind, and testified that the viewer would be confronted by the instantaneous juxtaposition of the artificial and the natural.

Dr. Rotenstein testified that in his professional opinion, the proposed monopole installation does not conform to the *Secretary’s Guidelines* or to Chapter 24A because it introduces something that is out of scale and character with the historic district. He testified that he would advise a client seeking such an installation to first consider co-location possibilities and, failing that, that he would strongly recommend a change in the design of the facility to minimize its visibility within the historic district. Dr. Rotenstein testified that he had previously advised clients in Section 106 proceedings and in local zoning proceedings about alternative designs for historic properties or districts. He stated that in the instant case, rather than a monopine, he would recommend construction of a brown stick monopole,<sup>30</sup> which he testified would create less of a visual impact. He reiterated his position that the stealth aspect of the proposed monopole creates more of a visual impact than would such a structure if it looked like what it is—a telecommunications facility. He noted that the fake branches on this monopine actually cause the monopole to be seven feet taller than it would otherwise need to be. Finally, he testified that it was his understanding that the construction of a monopine could be as much as twice as expensive as a standard, non-stealth telecommunications structure.

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<sup>29</sup> See, e.g., [www.fraudfrond.com](http://www.fraudfrond.com).

<sup>30</sup> Dr. Rotenstein explained that a “brown stick monopole” is essentially a monopole, painted with a mat finish to minimize visibility. He testified that all of the antennae, cables, and other equipment are located inside of the pole, and that the pole itself is a narrower structure than the proposed stealth tree design.

Dr. Rotenstein testified that he had taught a class on compliance with the National Environmental Policy Act and the National Historic Preservation Act which had caused him to visit dozens of stealth monopole installations, from California to New England. He presented pictures of some of those monopoles to the Board, describing them as he went, indicating that some stand out, while others are well-done. See Exhibit 18, and October 22, 2008 Tr. at pages 198-206.

On cross-examination, Dr. Rotenstein differentiated the type of work he does from that done by Ms. Mahood, and acknowledged that he had done consulting work for Sprint/Nextel, a competitor of Verizon. He testified that he was aware that Sprint had built a flagpole monopole at the church properties in question in this proceeding, but stated that he was unaware of when that facility was constructed. He testified in response to questioning on cross-examination that he had not appeared at public hearings for the Sprint monopole to oppose it because of its impact on the historic district.

Dr. Rotenstein testified in response to questioning on cross-examination that he was familiar with "About Communications Towers, Historic Preservation Perspective," published by the State of New Jersey, Department of Environmental Protection, Natural and Historic Resources Historic Preservation Office, which indicated that the stealth (tree) design of the telecommunications installation at Mount Vernon reduced its visibility. See Exhibit 27 at page 4.

Dr. Rotenstein testified on re-direct that there is a tremendous amount of disagreement in the historic preservation community as to whether telecommunications facilities adversely affect historic properties. He testified that there is no "cookie cutter" approach to mitigating the adverse effects of such facilities, but rather that there was consensus that every situation is unique, and requires a solution that is particular to that situation.

## **CONCLUSIONS OF LAW**

1. Section 24A-7(h)(1) of the Montgomery County Code provides that:

"Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission's decision to the Board of Appeals, which must review the decision de novo. The Board of Appeals may affirm, modify, or reverse any order or decision of the Commission."

2. Ordinarily, as this Board has previously held, when an appeal from a quasi-judicial body is heard "de novo," the matter is to be tried anew as if it had not been heard before and as if no decision had been previously rendered. In effect, the Board is exercising what amounts to original jurisdiction. For all intents and purposes, it is the first hearing of the case. *Pollard's Towing, Inc. v. Berman's Body Frame & Mech., Inc.*, 137 Md. App. 277, 768 A.2d 131 (2001); *Boehm v. Anne Arundel County*, 54 Md. App. 497, 459 A.2d 590 (1985); *Lohrmann v. Arundel Corp.*, 65 Md. App. 309, 500 A.2d 344 (1985); *Hill v. Baltimore County*, 86 Md. App. 642, 587 A.2d 1155 (1991).

However, the Board is accorded some flexibility in pursuing a “de novo” inquiry. The Maryland courts have stated that the meaning of the term “de novo” with respect to administrative appeals may vary with the subject matter of the review, the function of the agency, or the nature of the remedy. *Boehm*, 459 A.2d at 598. “There are many provisions in Maryland law for what are loosely termed de novo ‘appeals.’ Some of these appeals are less ‘de novo’ than others in that the action of the body subject to review retains some vitality and must be considered in the reviewing process.” *Lorhmann*, 500 A.2d at 348.

In this case, the function of the Board is not, as it is elsewhere in the Code provided, to “hear” or “decide” the matter “de novo” (see, e.g., appeals from the Sign Review Board, Section 59-F-10.3). Under the Historic Preservation ordinance, rather, the Board’s function is to “review the [HPC] decision de novo.” We must assume that the County Council meant to use these particular words, and we must give them meaning. In order to review a decision, we must consider the decision. We think it is altogether appropriate, then, for the HPC to participate in the hearing and present its findings and reasons for making the decision that it did.

With respect to the burden of proof, Section 2A-8(d) of the County’s Administrative Procedure Act, which governs this proceeding, states unequivocally that “where a governmental agency or an administrative authority is a party, such agency or administrative authority shall have the burden of going forward with the production of evidence at the hearing before the hearing authority.” Section 2A-10(b) provides that “all recommendations and/or decisions of the hearing authority shall be based upon and supported by a preponderance of the evidence of record.” Consequently, where HPC is a party, it is required to produce evidence to show that its decision is correct. The Appellant may produce evidence to the contrary. The Board’s duty is to determine, by a preponderance of the evidence presented by all of the parties, whether the HAWP was correctly denied.

3. In reviewing an application for an historic area work permit, we look first to the criteria set out in Section 24A-8 of the Montgomery County Code:

- “(a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.
- (b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to insure conformity with the purposes and requirements of this chapter, if it finds that:
  - (1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or

- (2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or
  - (3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or
  - (4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or
  - (5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or
  - (6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.
- (c) It is not the intent of this chapter to limit new construction, alteration or repairs to any 1 period or architectural style.
- (d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district.”

We must also consider the criteria for HAWP approvals set out on the HPC’s regulations, as codified at Section 24A.01.01.1.5 of the Code of Montgomery County Regulations:

- “(a) The Commission shall be guided in their review of Historic Area Work Permit applications by:
- (1) The criteria in Section 24A-8.
  - (2) *The Secretary of the Interior's Standards and Guidelines for Rehabilitation.*
  - (3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in historic districts by level of significance - if applicable. Such categories will be defined and explained clearly in the applicable plans.

- (4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.
- (b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the *Secretary of the Interior's Standards and Guidelines for Rehabilitation*, the master plan guidance shall take precedence."

Testimony and evidence of record indicate that the *Secretary's Standards* that are most pertinent to the analysis of this case are Standards 1, 2, and 9, which state:

1. A property will be used as it was historically or be placed in a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

See Exhibit 6(a).

4. The final Planning Board draft of the Amendment to the Approved and Adopted Master Plan for Historic Preservation in Montgomery County, Maryland for Damascus-Goshen Historic Resources states that:

A significant feature of the Woodfield Historic District is the rural streetscape which is characterized by mature trees, the orientation of houses to the road, and the modest scale of architectural elements fronting the road. Review of proposed changes should ensure that these features are respected.

Although this Amendment to the Master Plan has not yet been adopted and thus is not formally binding, it is nonetheless instructive because it sets forth the evaluation of designation staff as to the reasons for the designation of this historic district. See Exhibit 11 at page 44.

5. Section 24A-2 of the Montgomery County Code contains definitions of terms used in Chapter 24A, including the following which are relevant to this matter:

Appurtenances and environmental setting: The entire parcel, as of the date on which the historic resource is designated on the master plan, and structures thereon, on which is located an historic resource, unless reduced by the District

Council or the commission, and to which it relates physically and/or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), vegetation (including trees, gardens, lawns), rocks, pasture, cropland and waterways.

Historic district: A group of historic resources which are significant as a cohesive unit and contribute to the historical, architectural, archeological or cultural values within the Maryland-Washington Regional District and which has been so designated in the master plan for historic preservation.

Historic resource: A district, site, building, structure or object, including its appurtenances and environmental setting, which is significant in national, state or local history, architecture, archeology or culture. This includes, but is not limited to, all properties on the "Locational Atlas and Index of Historic Sites in Montgomery County."

6. From these regulations and standards, we glean the following guiding principles applicable to the Appellant's HAWP proposal:
  - The scope of the "appurtenances and environmental setting" of this historic district, which would generally have included the entirety of parcels located within the district pursuant to Section 24A-2 of the County Code, has been reduced in the final draft amendment for Damascus-Goshen Historic Resources to the Master Plan for Historic Preservation in Montgomery County to direct the focus of preservation efforts towards the streetscape of this linear community, which is described as being characterized by mature trees, the orientation of houses to the road, and the modest scale of architectural elements fronting the road.
  - Any new use of this Property must occasion minimal change to the distinctive materials, features, spaces, and spatial relationships that characterize this property.
  - The historic character of the Property must be retained and preserved, and the alteration of features, spaces, and spatial relationships that characterize the Property must be avoided.
  - The HAWP must be denied if the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic Property, and to the purposes of Chapter 24A.
7. Applying these guiding principles to the HAWP application before us, we find that the weight of evidence supports approval of the proposed monopole.

The evidence before the Board establishes that the Property at 23630 Woodfield Road is located in the (locational atlas) Woodfield Historic District, which was designated as an historically significant "linear community" that grew in the late 1800s and the early 1900s to serve the farming families in the immediate area. See Exhibit 11 at page 41.

The importance of this “linear” nature was reiterated in the testimony of Ms. Mahood and Ms. Fothergill. The streetscape is of paramount significance to this linear community, and is highlighted in the draft amendment designating this district as historical. See Exhibit 11 at page 44 (“A significant feature of the Woodfield Historic District is the rural streetscape which is characterized by mature trees, the orientation of houses to the road, and the modest scale of architectural elements fronting the road.”).

The Board finds that the photos and photographic simulations introduced by the Appellant at Exhibits 8(c)(8) and (9) were very carefully executed, and demonstrate the impact of the proposed monopole. While the photographs and photographic simulations indicate that there are five properties in the historic district from which this monopole would be visible, they also show that it would not be visible (or would be barely visible) from the vast majority of properties within the district. The Board notes that the monopole would be located in a stand of trees at the rear of the subject Property, and would be set back 350 feet from the street. See testimony of Ms. Mahood and Mr. Whipple; see also Exhibit 16. The Board further notes, as acknowledged on cross-examination by Ms. Fothergill, that the proposed monopole would not affect the mature specimen trees at the front of the Church’s properties, the orientation of the houses in the historic district to the road, or the modest scale of the architectural elements fronting the road. The Board concludes, after considering the reasons cited for the designation of this historic district and the individual resources therein, that the visibility of the proposed monopole would not have a significant adverse effect on the way in which the historic district or the individual resources in the district, including the subject Property and the historic streetscape, are perceived. The Board finds that to the extent the proposed monopole would be visible, any visibility would be as a background element, apart from the streetscape, and would be largely obscured by elements in the foreground. With respect to the proposed equipment cabinet, the Board notes that testimony indicates that a nearly 20 foot tall cinderblock garage located in the rear of the Church property is not visible from the street, and thus concludes that the proposed Verizon equipment compound would be no more visible. Thus the Board finds that the work proposed in the subject HAWP would not substantially alter the exterior features of an historic site or historic resource within an historic district, and should have been approved pursuant to Section 24A-8(b)(1) of the County Code. Having found that the HAWP could be approved under Section 24A-8(b)(1), the Board declines to address potential approval under paragraphs (2) through (6) of that Section

8. Accordingly, this Board finds by a preponderance of the evidence that that the HPC incorrectly denied the requested HAWP. The Appellants’ appeal is therefore **GRANTED**.

On a motion by Vice Chairman Catherine G. Titus, seconded by Member Wendell M. Holloway, with Chairman Allison I. Fultz, in agreement, and Member David K. Perdue not in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

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Catherine G. Titus  
Vice-Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 9<sup>th</sup> day of January, 2009.

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Katherine Freeman  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.